

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**CHRISTIPHER BARNES,
JANEL MOSER,
KRISTINE NIMMER,**

Plaintiffs,

v.

Case No. 05-C-774

**ADVANCE CALL CENTER
TECHNOLOGIES, LLC,**

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE THE AFFIDAVIT OF
JOSEPH LEMBO**

On June 2, 2006, plaintiffs Chritipher Barnes, Janel Moser, and Kristine Nimmer, by counsel, filed an expedited motion pursuant to Civil L.R. 7.4 to strike the affidavit of Joseph Lembo, President and Chief Executive Officer of Advance Call Center Technologies, LLC (“ACCT”). The affidavit was attached to ACCT’s Reply Brief in support of its Motion for Summary Judgment. In a letter submitted with the brief and affidavit, ACCT states that the affidavit is necessary to refute the plaintiffs’ implication that ACCT would not have accepted the amount stated in its collection letters as full satisfaction of the debt it was collecting. The parties had previously agreed to proceed to summary judgment upon stipulated facts rather than pursue full discovery. Accordingly, ACCT submitted the stipulated facts along with its motion for summary judgment.

Pursuant to Civil Local Rule 7.4, ACCT was given five days to respond to the plaintiffs’ Motion to Strike. ACCT has failed to respond. Although unaided by ACCT’s response, the court is

persuaded that the affidavit should be struck. Based upon ACCT's letter explaining its submission and the plaintiff's motion to strike, the affidavit appears to merely dispute the plaintiff's argument based upon the stipulated facts. Because it merely refutes argument rather than adds additional facts, it is unnecessary. Second, to the extent that the affidavit may add facts beyond the stipulated facts, such action is contrary to the parties' earlier agreement to proceed to summary judgment upon stipulated facts.

IT IS THEREFORE ORDERED that the plaintiffs' motion to strike the affidavit of Joseph Lembo is **granted**.

Dated at Milwaukee, Wisconsin, this 16th day of June, 2006.

s/AARON E. GOODSTEIN
United States Magistrate Judge